SECK MUN FOO

v.

DATUK HARRIS MOHD. SALLEH

HIGH COURT SABAH & SARAWAK, LABUAN
SULEIMAN HASHIM J
[CIVIL SUIT NO: 45 OF 1991]
29 AUGUST 1996

LAND LAW: *Transfer - Gift - Whether complete and effective - Creation and assignment of estates under Torrens system - Whether registration paramount - Whether execution and delivery of dealing or instrument sufficient - Whether Court will assist volunteer.*

LAND LAW: *Sale of land - Bare trust - Whether vendor a mere bare trustee after receiving purchase money - Whether vendor may still assert strict legal rights - Whether equitable and beneficial ownership passes to purchaser.*

EVIDENCE: *Adverse inference - Submission of no case to answer - Defendant electing not to answer to allegations - Whether a factor in favour of drawing inference.*

EQUITY: *Estoppel - Proprietory or promissory estoppel - Operation of - Whether money expended on land must be one's own money - Whether ownership of land necessary.*

CONSTITUTIONAL LAW: *Parliament - Committees - Validity of proceedings - Whether open to question in Court.*

The instant suit was brought on behalf of the Kelab Golf Labuan ('the club') by the plaintiff who is a member and the incumbent president of the club. The defendant is the registered proprietor of a piece of land.

The plaintiff claimed, *inter alia*, that the defendant is a bare trustee of the said land on behalf of the club; that the defendant attempted or perpetrated a fraud on the club by concealing his bare trusteeship when he attempted to retake the land; that the club has an irrevocable licence to occupy the land and is rightfully entitled to have its name registered on the title; and that the defendant is bound by proprietory or promissory estoppel and/or estoppel by conduct not to resile from his obligation to convey and transfer the land to the club. Alternatively, the plaintiff claimed that the defendant gifted the land to the club. In this regard, the plaintiff contended that that a gift is complete once the donor has done all that is needed to be done by him to convey the

interest in the gift to the donee. At the close of the case for the plaintiff, the defendant elected not to adduce any evidence and submitted that there was no case to answer.

Held:

[1] Under the Torrens system, it is the official act of registration and not the execution and delivery of the dealing or instrument which creates or assigns the estate. In the instant case, the title deeds were returned to the defendant and, thereafter, nothing was done to make the gift effective. Hence, the Court was incompetent to assist a volunteer by making an incomplete gift effective.

[2] A person who has parted with his land and has received the purchase money is merely a bare trustee of the said land. His name may appear on the land title but he may assert no legal rights over it because the equitable and beneficial ownership has passed to the buyer. In the instant case, the defendant had sold the land to the plaintiff, albeit in a circuitous manner; consequently, the defendant is only a bare trustee of the land although his name still appears on the land title.

[3] Where an inference is open from facts proved by direct evidence and the question is whether it should be drawn, the circumstances that the defendant disputing it might have proved the contrary had he chosen to give evidence is properly to be taken into account as a circumstance in favour of drawing the inference. In the instant case, there were many questions unanswered by the defendant who had elected not to give evidence. Various documents pointed to the conclusion that there existed a sale transaction involving involved Sykt. Berdikari Sdn. Bhd. or Sykt. Tambisan Sdn. Bhd. and the defendant wherein the defendant was paid off or compensated for the land. The defendant's unexplained dealings with the land, *viz*, attempts to cancel and/or to conceal the sale of the land, also invited the inference that he must have sold the land.

[4] The defendant was ready and willing to transfer the land to the plaintiff. He had instructed his solicitors to prepare the necessary documents to effect the transfer, and all parties concerned in the instrument of transfer had signed the relevant documents. That which remained to be done was to date the transfer and lodge it at the Land Office. From these events, it could be inferred that the defendant transferred the land knowing that he was only a bare trustee.

[5] The plaintiff's case on fraud against the defendant was an extension of the bare trustee principle. The defendant had deliberately withheld the fact that he sold the land to Sykt. Berdikari Sdn. Bhd. for valuable consideration

and, thereafter, had exploited the ignorance of the new management committee of the club by actively showing his interest to retake the land from the club for resale.

[6] It is not true, that for proprietory or promissory to be raised in favour of the club, the club must have expended its own money on the land. Nor is it true that the plaintiff must own the club. In the instant case, it would be unconscionable for the Court to allow the defendant to insist on his strict legal rights considering what had been expended on the land by Sykt. Berdikari Sdn. Bhd., Sykt. Tambisan Sdn. Bhd., and various government organisations.

[7] It is not open to the Court to challenge the accuracy of anything said or done in Parliament or in its Committees.

[Appeal allowed, order accordingly. Stay of execution granted pending appeal]

Cases referred to:

Anning v. Anning [1907] ACLR 1057 ***(dist)***
Jasbar Kaur & Anor. v. Tharumber Singh [1974] 1 MLJ 224 ***(foll)***
Karuppiah Chettiar v. Subramaniam [1971] 2 MLJ 116 ***(foll)***
Temenggong Securities Ltd. & Anor. v. Registrar of Titles Johore & Ors. [1974] 2 MLJ 45 ***(cit)***
Jones v. Dunkell [1958-1959] 101 CLR 298 ***(foll)***
Johari Bi v. Lawrence Lam [1981] 1 MLJ 139 FC ***(cit)***
Loke Yew v. Port Swettenham Rubber Co. [1913] AC 491 ***(refd)***
Cheng Hang Guan & 2 Ors. v. Perumahan Farlim (Penang) Sdn. Bhd. & 3 Ors. [1994] 1 CLJ 19 ***(cit)***
Inwards v. Baker [1965] 24B 29; [1965] 1 All ER 446 ***(foll)***
Prebble v. Teleminon NZ Ltd. [1994] 3 All ER 407 ***(refd)***
International Times & Ors. v. Leong Ho Yuen [1980] 2 MLJ 86 ***(cit)***

Legislation referred to:

Bill of Rights (New Zealand), Art. 9
Federal Constitution, Art. 63(1)
House of Parliament (Privileges and Powers) Act 1952, s. 23
Evidence Act 1950, s. 34

For the plaintiffs - Dr. Cyrus V. Das (Robin Ch'ng, M.S. Sandhu & Steven Thiru with him); M/s. Robin Ch'ng & Co.
For the defendant - Gopal Sri Ram (until 6 April 1994) (Manjit Singh & Colin Lau with him); M/s. Colin Lau & Co.

JUDGMENT

Suleiman Hashim J:

The plaintiff is a member and the incumbent President of Kelab Golf Labuan (hereinafter referred to as the 'LGC') and brings this action on behalf of the club as the plaintiffs.

The defendant's name appears as the registered proprietor of land held under Town Lease No. 207512589 (hereinafter referred to as 'the land').

The plaintiffs' claim with a certain amount of overlapping is as in the amended statement of claim dated 20 August 1991:

(1) A declaration that the defendant holds the said land as a bare trustee for and on behalf of the club which is rightfully entitled to have its name registered on the title held as Town Lease No. 207512589;

(2) A declaration that by reason of fraud the defendant is not entitled to remain as the registered proprietor of the said land and an order that the name of the defendant be expunged from the title to the said land and the same be rectified by the name of the club being substituted in place thereof;

(3) A declaration that the defendant holds the said land held under Town Lease No. 207512589 as a constructive trustee on behalf of the club and is therefore precluded from dealing and/or acting in any manner inconsistent with his duties as constructive trustee;

(4) A declaration that the defendant is bound by proprietary or promissory estoppel and/or estoppel by conduct not to resile from his obligation to convey and transfer the land held under Town Lease No. 207512589 into the name of the club;

(5) A declaration that the club possesses an irrevocable licence in equity to permanently occupy and remain on the said land and enjoy all the benefits thereon;

(6) An order that the defendant do forthwith transfer the said land into the name of the club and/or of its trustee;

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(9) costs; and

(10) such further or other relief as this honourable Court shall deem fit.

Dated 15 April 1991.

Amended and re-dated 20 August 1991.

Counsels for both parties tendered written submissions and list of authorities, the plaintiffs' on 20 October 1995 and the defendant's on 18 December 1995.

The Agreed Bundle of Documents is marked 'ABD' and the Non-Agreed Bundle of Documents is marked 'NABD'.

At the close of the case for the plaintiffs, the defendant elected not to adduce any evidence and submitted that the plaintiffs had not made out a case to answer, that there was no case for defendant to answer.

The land, a gift from the defendant to the plaintiffs?

Another alternative head of claim by the plaintiffs is that the defendant gifted the land to the plaintiffs. The plaintiffs support this contention by way of Exhs. P1 to P14 and ABD47 to 57 which show that the defendant intended to voluntarily transfer or gift the land to the plaintiffs.

It is the submission by the plaintiffs' Counsel that a gift is complete once the donor has done all that is needed to be done by him to convey the interest in the gift to the donee. The donor need only to execute a valid transfer and to hand the original title to the donee or his representative. Both these conditions were complied with by the defendant.

The plaintiffs relied on the case of *Anning v. Anning* [1907] ACLR 1057 where it was said by Griffith CJ that, "so in the case of land held under the Act, regulating the transfer of land by registration, I think that a gift would be complete on execution of the instrument of transfer and delivery of it to the donee."

The defendant disagrees with this contention and says that the case of *Anning v. Anning* must be read subject to the case of *Jasbar Kaur & Anor. v. Tharumber Singh* [1974] 1 MLJ 224 at 228 where it was said that under the Torrens system it is the official act of registration and not the execution and delivery of the dealing or instrument which creates or assigns the estate. his Lordship Azmi LP, goes on to say, "In my view therefore the memorandum of transfer executed by the plaintiff before its registration had not effectively transferred the land to the 1st defendant."

With respect, I agree with the submission by the defendant's Counsel in the sense that since the title deeds were returned to the defendant and thereafter nothing was done to make the gift effective, I feel incompetent to assist a volunteer by making effective an incomplete gift. Therefore the claim by the plaintiffs under this head must fail.

The burden of proof is on the plaintiffs to establish:

(1) That the defendant is a bare trustee of the land on behalf of the plaintiffs.

(2) That the defendant attempted or perpetrated a fraud on the plaintiffs by concealing the fact that he is a bare trustee of the land when he attempted to re-take the land around 1990-1991.

(3) That the plaintiffs have an irrevocable licence to occupy the land and is rightfully entitled to have its name registered on the title held as Town Lease No. 207512589. Promissory estoppel and/or estoppel by conduct.

Whether or not the defendant is a bare trustee of the land on behalf of the plaintiffs – the application for and the award of a timber concession by/to Berdikari – the land cost – sale transaction of the land between the defendant, Berdikari, and Tambisan.

It is submitted by the plaintiffs' Counsel that the defendant is a bare trustee of the land because he had been paid off or compensated for the land by Sykt. Berdikari Sdn. Bhd. and by Sykt. Tambisan Sdn. Bhd.

A timber concession was awarded to Berdikari, logged by Tambisan, solely for the purpose of building the 9-hole golf course on the land. It all began with a board of directors' meeting of Berdikari on 25 July 1972. It was decided that Berdikari was to apply for an additional concession of 9,000 acres. It was agreed among the directors that to show appreciation of what had been given by the State Government, Berdikari would construct an international standard golf complex in an area of 91 acres under TG 412 in Labuan. As soon as construction was completed the golf course was to be handed over to the LGC.

Documentary evidence tendered by the plaintiffs shows clearly the connection between the timber concession and the building of the LGC.

I can do no better than quote the submission by the plaintiffs' Counsel and the list of documentary evidence relied on by the plaintiffs in support of this contention:

(2) **The Connection between the Timber Concession to Sykt. Berdikari, the logging by Tambisan Sdn. Bhd. and the building of the Labuan Golf Club**

1. This connection is made abundantly clear by the documentary and oral evidence given in Court. In this it is also material to note the time sequences, namely, the giving of the timber concession, the working of the concession and the building of the golf club, all of which took place between 1972 and 1975.

2. The following documents tendered in Court, and duly marked as exhibits, show clearly the connection between the timber concession and the building of the golf club on the defendant's land; and the connection between Sykt. Berdikari and Tambisan Sdn. Bhd.; and the involvement of the defendant:

25.7.72 : Sykt. Berdikari Board Meeting decides to apply for timber concession and in return to build a 9-hole golf course on Lot TG 412 in Labuan.

Note the following:

a) present are *inter alia,* Hussein Wahid Dally, Datuk Mohd Din, Haji Ali Green and Shamsuddin bin Assim.

b) TG 412 the land registered in the name of the defendant, already identified as the land for the golf course. (see Exh. P8)

7.8.72 : Sykt. Berdikari's letter to Jabatan Hasil Bumi making their application, with offer to build golf course, and enclosing above board minutes.

Note:

a) Lot 412 specifically identified for golf course.

b) Golf land cost specifically stated to be RM1,137,500.

c) building cost said to be RM874,500. (see Exh. P7)

12.8.72 : Jabatan Hasil Bumi gives approval for additional 9,000 acres timber land **on express conditions contained in Sykt. Berdikari's application letter.** (see Exh. P6)

20.11.72 : Jabatan Hutan writes to Sykt. Berdikari giving 7,000 acres timber land at Tambisan area, Sandakan. (see Exh. P55)

22.12.72 : Jabatan Hutan writes again to Sykt. Berdikari giving additional 2,000 acres, **"supaya tuan dapat memenuhi membuat**

satu kompleks golf bertaraf antarabangsa di Labuan."

Note:

a) letter is captioned **"Kompleks Golf Labuan."** (see Exh. P60)

21.2.73 : Jabatan Hutan **writes to defendant giving "photo interpretation – of the area at Tambisan for Berdikari."**

Note:

a) the photo map is sent to defendant "as requested." (see Exh. P61)

27.2.73 : Sykt. Berdikari board meeting deciding to assign the logging licence to "newly established company" Tambisan Sdn. Bhd.

Note:

a) present are Hussein Wahid Dally, Datuk Mohd Din (Chair), Haji Ali Green and Shamsuddin Assim.

b) the assignment is recorded as for "convenience in income tax computation purposes." (see Exh. P56)

1.3.73 : Sykt. Berdikari writes to Jabatan Hutan for licence to be issued in name of Tambisan Sdn. Bhd. stating, **"we have established a new company in the name of Tambisan Sdn. Bhd. to carry out logging on behalf of Sykt. Berdikari."**

Note:

a) letter is captioned "fund for Labuan Golf Club."

b) letter signed by Hussein Wahid Dally (PW3) as managing director.

c) purpose is stated to be for tax purposes. (see Exh. P9)

d) Tambisan Sdn. Bhd. is a RM2 company with Tan Sri Wong Chik Lim as principal director and shareholder. (see Exh. P19)

3.3.73 : Sykt. Berdikari writes again to Jabatan Hutan forwarding minutes of board meeting on logging licence for Tambisan Sdn. Bhd.

Note:

a) letter is captioned "fund for Labuan Golf Club" and signed by Hussein Wahid Dally (PW3). (see Exh. P63)

5.3.73 : Jabatan Hutan replies to Sykt. Berdikari declining to issue licence in the name of Tambisan Sdn. Bhd. but suggesting that power of attorney be given. (see Exh. P58)

14.3.73 : Chief Minister's Department writes to Jabatan Hutan stating that licence could be issued in the name of Tambisan Sdn. Bhd., **"oleh sebab syarikat itu ialah satu syarikat 'associate' dengan Sykt. Berdikari Sdn. Bhd."** (see Exh. P62)

20.3.73 : Jabatan Hutan writes to Tambisan Sdn. Bhd. stating that Government has agreed to issue licence in its name as **"an associate" of Sykt. Berdikari.** (see Exh. P57)

23.3.73 : Tambisan Sdn. Bhd. writes to Jabatan Hasil Bumi thanking them for approval of the 11,000 acres of timber, **"for the Labuan Golf Course fund."** Letter states further that, **"the Labuan Golf Course project is under way"** and ask for an additional 1,000 acres as "we are presently short of funds."

Note:

a) letter is captioned **"fund for Labuan Golf Course."**

b) letter is signed by Tan Sri Wong Chik Lim as Chairman (see also evidence of Victor Wong (PW9) on this).

c) letter is copied to Sykt. Berdikari. (see Exh. P15)

10.5.73 : Licence issued to Tambisan Sdn. Bhd. (see Exh. P66)

18.8.73 : Note in the file of Registrar of Societies records defendant as pressing for registration

of Labuan Golf Club, **"because the Club has bought some properties and is now negotiating another piece of land to be purchased in the name of a committee member first as the Club has not been registered yet."**

(see Exh. P50)

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i) **Exhibit P10:** letter dated 11 September 1975 from Sykt. Berdikari to defendant reiterating their letter of 7 August 1972 to Jabatan Hasil Bumi promising to build the golf course in return for the timber concession.

ii) **Exhibit P11:** letter dated 25 November 1975 from Sykt. Berdikari to Chief Minister's Department stating, "we applied for a timber licence from the State Government on the condition that we will build a golf course complex for the Golf Club Labuan, and it was on this condition that the State Government approved and granted us the special timber licence."

iii) **Exhibit P14:** letter dated 11 October 1990 from the defendant to Dato' Mohd Din of Sykt. Berdikari under caption "Tanah TL 207512589 – Labuan Golf Club", stating: **"Saya suka menarik perhatian saudara kepada tahun 1972 hingga tahun 1975 di mana kita semua berusaha untuk mendapatkan kawasan kayu balak dan seterusnya menggunakan wang tersebut untuk pembangunan 9-lubang golf club."**

I agree with the plaintiffs' Counsel that these documents show the connection between the timber concession and the building of the LGC on the land and the connection between Berdikari, Tambisan and the defendant. These documents also infer that there existed a sale transaction that involved Berdikari or Tambisan and the defendant and where the defendant was paid off for the land.

P7 shows the application for the said 9,000 acres.

Hussein Wahid Dally (PW3), a director of Berdikari, gave evidence that Berdikari did apply for a 9,000 acres timber concession from the State Government by way of letter (P7). PW3 also confirmed that in return for the

9,000 acres Berdikari proposed to build a 9-hole golf course in Labuan together with a club house, a swimming pool and a tennis court. PW3 also confirmed that Tambisan was to do the logging, sale of logs and also to be in charge of the funds derived from the sale of logs.

The plaintiffs tendered various documents in support of their contention that there was a sale transaction of the land between Berdikari/Tambisan and the defendant.

Firstly, P7 shows that the land cost is stated to be RM1,137,500 while the cost of constructing the golf course is RM874,500.

Secondly, a letter (P10) dated 11 September 1975 from PW3 to the defendant states that the land was bought from the defendant. PW3 also testified that he would not have signed P10 if it was not true.

An extract from P10 is:

> You will remember that when we negotiated to purchase your land for the golf course, it was made clear to you that we are purchasing this land for the golf course on behalf of the Labuan Golf Course ... we hereby request that with immediate effect to enter into an irrevocable agreement to transfer the said land purchased by us to the Labuan Golf Course, an area of 74 acres as agreed by you.

PW3 also said in evidence:

S. I think we can help you by looking at your own letter, this is IDP10, last paragraph. Can we take it that by September 1975 the land had been purchased?
J. By September 1975 I think we had purchased the land by this date.

S. Can you tell us how much was the land bought for?
J. RM1,137,500

The defence contends that the evidence of PW3 cannot be relied because PW3 does not know if the defendant had in fact been paid for the land. It is also submitted by the defence that the evidence of PW3 is inconsistent and contradicts his evidence contained in P13 and P14, therefore unreliable.

In answer to this let us look at the testimony of PW3:

S. Time frame March 1973 and November 1975, when was the land purchased by SB?
J. Here again I could not answer or give exact date or year when our company purchased the land as this was arranged by ST and the owner of the land.

S. I think we can help you by looking at your own letter, this is IDP10 (now P10), last paragraph. Can we take it that by September 1975 the land had been purchased?

J. By September 1975 I think we had purchased the land by this date.

S. How much was paid for the land by SB?
J. No, I cannot tell because the transaction, the financial transaction, was not handled by me.

S. Who handles the financial transaction?
J. The person who handled the financial transaction was Tan Sri Datuk Wong Chik Lim.

S. Was the transaction carried out, the purchase?
J. Transaction means whether Tan Sri Datuk Wong Chik Lim paid the money to the land owner?

S. The proceeds from sale of logs by ST (Tambisan Sdn. Bhd.) was to build the golf course, correct?
J. Correct.

S. **Were the proceeds also utilised to buy the said land from defendant?**
J. **Yes.**

S. **Could you tell us how much was the said land bought for?**
J. **RM1,137,500.**

S. Do you know how the transaction by which the land was sold by defendant to SB was carried out?
J. No. I do not know.

The testimony of PW3 shows that he knows that the defendant was paid for the land to the tune of RM1,137,500 but he does not know how the transaction by which the land was sold because the transaction was handled by Tan Sri Wong Chik Lim, chairman of Tambisan. I would hardly call that inconsistent nor contradictory.

P12 and P13 show that Berdikari through PW3 and Datuk Mohd Din, director of the company, maintain that the land was purchased from the defendant.

With respect, a person who has parted with his land and has received the purchase money as the defendant in the present case is merely a bare trustee of the land. His name may appear on the land title but he may assert no legal rights over it because the equitable and beneficial ownership has passed to the buyer. Since the plaintiffs have proved that the defendant has sold the land to Berdikari the defendant is only a bare trustee of the land eventhough his name still appears on the land title. I have for my guidance the case of *Karuppiah Chettiar v. Subramaniam* [1971] 2 MLJ 116 where it was held that the registered proprietor having sold his entire interest in the land and received payment in full held the legal estate only as a bare trustee for the respondent who was the equitable owner, also *Temenggong Securities Ltd. & Anor. v. Registrar of Titles Johore & Ors.* [1974] 2 MLJ 45.

Thus the defendant having sold the land to the plaintiffs, albeit in a circuitous manner is now a bare trustee for the plaintiffs, a *fortiori* the circuitous manner how Tambisan, the defendant and the building of the LGC are inter-connected with the "Tambisan Donation."

How Tambisan, the Defendant and the Building of LGC are inter-connected with the "Tambisan Donation".

Victor Wong @ Wong Ket Sing (PW9), a past director of Tambisan, testified to show the connection between Tambisan and the LGC:

S. How does ST, in what way was ST building the LGC?
J. As far as I can remember there was some arrangement whereby some funds were to be given to LGC so that they can take over the timber land, fund to be given to LGC by ST, so that ST can take over the timber land.

S. Can you make it clear what you mean ST take over the timber land?
J. That is the timber licence to be issued to ST.

PW9 further said in evidence:

S. If as you say donations were to go to Labuan Golf Club where would one fit that in the statement of accounts?
J. There is, in the accounts there is no mention of LGC because all the donations have been channelled to the Sabah Sports Council.

This is confirmed by John Liaw Chee Shing (PW6), a public accountant, who audited Tambisan's accounts. PW6 said that the audited accounts of Tambisan for the year ended 31 December 1974 showed a donation of RM1,682,160 to "Sports Council" leaving a debit balance of RM392,118, see P21 and P22. PW6 is of the view that it is abnormal for a company to give away 99.52% of its profits as donation.

PW9 confirms that the RM1,670,000 less 5% to the Sports Council was meant for the LGC. PW9 also testified that the money was remitted to Labuan also through the Labuan District Council direct to the LGC or to the main contractor of the LGC, that is, Jati (Malaysia Timur) Sdn. Bhd. It is also PW9's testimony that he (PW6) signed remittance slips for periodic payments to Jati based on instructions of the defendant and by the chairman or directors of Tambisan:

S. You remitted the money?
J. I am not directly involved in the remittance usually by the accountant but I am involved in the signing of the remittance slips.

PW9 further said in evidence:

S. The name of the contractor is Jati (Malaysia Timur) Sdn. Bhd.?
J. Yes.

S. What was the ... between Tambisan and these recipients in Labuan, whether the Club, contractor or District Council know, would you know when to send, how much to send?

J. Based on instructions I received from defendant sometimes from the chairman or directors.

S. You remitted the money?

J. I am not directly involved in the remittance, usually by the accountant but I am involved in the signing of the remittance slips.

Jim Rajaratnam (PW8), a consultant engineer, testified that the defendant as the co-ordinator of the LGC project has enough clout to arrange finance and to ensure works are carried out:

S. What in your opinion or perception was the role of the co-ordinator in this project?

J. To arrange finance and to ensure the work was carried out.

There is evidence to show that the defendant authorised payments of major expenditures. Even if payments were made through the Labuan District Office, copies of statement of accounts were sent to the defendant on a regular basis, see P26, P33, P34, P35, P27, P30.

The accounts of Jati showed receipt of RM334,339.98 in 1974 where none was shown in the previous year, see P54B. P25 which is statement of account from the Labuan District Office shows payment made to Jati for the sum of RM80,000 which is not shown in Jati's 1973 account.

It is the submission of the plaintiffs' Counsel that when the two above sums are added together, the total sum is RM414,339.98 which is close to the architect's assessment of the cost of the LGC project of RM418,095.50, see P40. P40 alone shows that the total expenditure including the work done by Jati amounted to RM720,991.90. It is submitted by the plaintiffs' Counsel that out of the Tambisan Donation there are two possible sums unaccounted for, that is either RM1,234,256.60 or RM949,008.91. The plaintiffs' Counsel thus question what happened to these sums.

The submission by Counsel for the defendant in answer to the above is that while the submission by the plaintiffs' Counsel may have covered matters such as the flow of funds, the role of Tambisan, the defendant as co-ordinator, the Labuan District Office and Jati there was no submission by the plaintiffs' Counsel on any payment to the defendant for the land.

That may be so. But the plaintiffs have adduced evidence to show how the donation from Tambisan eventually was used to build the LGC.

Further, PW8 testified that the defendant was the person dealing with Tambisan for the purpose of financing the building of the LGC. PW8 said in evidence:

S. Would it be right Datuk Harris was the person who dealt with Tambisan for the purpose of financing the building of the Golf Course?
J. I would say so.

PW8 even wrote to the District Office to request that the District Office pay RM70,000 to one Shamsuddin bin Assim since the defendant had approved the payments for some work done for the LGC, see P33, P34, P35, P27, P38 and P30.

There is even evidence that the defendant would give instructions to Tan Sri Wong Chik Lim, chairman of Tambisan, authorising Tan Sri Wong to make payments to anyone. An example is the payment to PW8 who was paid RM10,000 by Tan Sri Wong on the instruction of the defendant, which payment was later regarded as payment on behalf of the LGC, see P30, Exh. 31 and P32.

From the evidence above it is clear that the defendant had a large say in the building of LGC and it would be reasonable to infer that the defendant knew or should be able to explain the whereabouts of the missing RM1,234,256.60 or RM949,008.91 from the "Tambisan Donation".

Questions unanswered by the defendant

After going through all the oral and documentary evidence, with respect, I agree with the submission by the plaintiffs' Counsel that there are many questions to be answered by the defendant, unanswered by the defendant. I can do no better than to reproduce some of the questions raised by the plaintiffs' Counsel for the defendant to answer:

(6) **Why the defendant has to answer?**

1. The plaintiff submits that on the oral and documentary evidence presented to Court, the defendant has to answer on the following questions raised from the circumstances and events established:

(1) How was it possible for Sykt. Berdikari to identify the defendant's land as the land on which the golf course was to be built when they first made the application for the timber concession on 7 August 1972 (see Exhs. P7 and P8)?

(2) The defendant admits in his statement of defence that he was aware that Syarikat Berdikari had identified his land to the State Government for the building of the golf course (see para. 1(f) of the re-amended statement of defence). If so, what was the arrangement between the defendant and Sykt. Berdikari that they should be allowed to use 74

acres of valuable land for a golf course in return for a timber concession?

Thus questions unanswered by the defendant include:

(1) If no sale transaction took place between Berdikari and the defendant why did the defendant write P14 proposing to cancel the agreement:

> Maka dengan ini, saya menganggap sebarang bayaran kalau ada sebagai dihilangkan (forfeited), oleh yang demikian saya juga menetapkan sebarang perjanjian di antara syarikat saudara dengan saya jikalau ada adalah dibatalkan (annulled).

(2) Why should the defendant be forfeiting any payment unless there is money to forfeit pointing to a sale transaction?

(3) How did Berdikari come up with the figure of RM1,137,500 as the sale price of the land as shown by the letter (P7), and the testimony of PW3?

(4) Why did the defendant try to obtain Berdikari directors' affidavit affirmation that there was an intention to sell but no payment was received by the defendant if there really was no sale of the property, see P13?

(5) (a) How would the defendant explain P50 where a telephone conversation with the District Officer of Labuan was recorded stating that the defendant was pressing for the registration of the club because, "the club has bought some property and is now negotiating another piece of land to be purchased"?.

(b) It is interesting to note that in the club's application for registration as a society two pieces of property were mentioned, mainly SL346 for the "Bangunan Golf" (see P49), SL346 eventually becoming part of Grant No. 20790412, the predecessor title to the land (see P46).

(6) Was the defendant lying to the Parliamentary Privileges Committee in May 1984 when he declared that he is only a trustee to the land when he now asserts that he is the true owner?

Now that the defendant has not come forward to answer any of the questions I agree with the submission by plaintiffs' Counsel that this is a factor to be taken into account. In *Jones v. Dunkell* [1958-1959] 101 CLR 298 Menzies J said that, "... where an inference is open from facts proved by direct evidence and the question is whether it should be drawn, the circumstances that the defendant disputing it might have proved the contrary had he chosen to give evidence is properly to be taken into account as a circumstance in favour of drawing the inference."

And here I am also reminded of the questions unanswered by Mr. Lawrence Lam Kwok Fu, manager, Kwong Lee Bank of Kuching, Sarawak, over the matter of RM135,000, *Johari Bi v. Lawrence Lam* [1981] 1 MLJ 139 FC.

Unexplained behaviour of the defendant in his dealing with the land, behaviour which remains unexplained in view of the defendant electing not to give evidence.

Also there is the unexplained behaviour of the defendant in his dealings with the land.

The defendant wrote ABD28 to the Amanah Tun Mustapha to say that the land is to be transferred to the LGC and not to the Sabah Golf Club. The defendant even sent corrections to ABD28 by way of letters P36 and P37.

An inference can be made that the defendant must have sold the land, otherwise there is no necessity for the defendant to write ABD28.

A letter (P14) dated 11 October 1990 from the defendant to Datuk Mohd Din of Berdikari attempts to cancel the sale of the land. The same letter mentioned that the defendant played an active part and active interest in timber activities of Berdikari from 1972 to 1975, as can be seen by a letter (P61) from the Forestry Department forwarding at the defendant's request a photo interpretation of the concession area.

There was also an attempt by the defendant to get PW3 and Datuk Mohd Din, the two directors of Berdikari, to affirm in an affidavit that there was no sale of the land, see P13. The directors refused to sign the prepared affidavit and rightly so.

Transfer of the land aborted only because the LGC could not afford to pay stamp duty RM600,000 and what transpired between Mr. Christopher Chin (PW5), Advocate & Solicitor M/s. Skinner Lind Robertson Pang and Willie, and the defendant at the defendant's office on 29 August 1984.

Further, the defendant was ready and willing to transfer the land to the plaintiffs. He even instructed Christopher Chin (PW5), and advocate & solicitor from the firm of Skinner Lind Robertson Pang and Willie to prepare the necessary documents to effect the transfer.

PW5 said in evidence that he prepared the instrument of transfer, that all parties involved in the instrument of transfer had signed the relevant documents, what remained to be done was only to date the transfer and lodge it at the Land Office. PW5 even recalls the defendant signing the documents in his (PW5's) presence. The signatures of the transferees who were three officers of the LGC were also done in his (PW5's) presence. PW5 admits to attesting to the transferor's and the transferees' signatures.

The only hitch to the transfer was the payment of stamp duty which amounted to about RM600,000 for which the LGC could ill afford at the time.

The application by the LGC for an exemption from the above stamp duty was rejected by the Finance Ministry, see P18, therefore PW5 then returned the transfer documents to the defendant pending further instructions from the defendant or the LGC.

PW5 said in evidence:

S. Would you look at ABD48 dated 9 August 1984, application for stamp duty exemption. This is the letter you wrote applying for stamp duty exemption?
J. That is correct.

S. You say there you act on behalf of the trustees of Labuan Golf Club. Can you tell us who the trustees were at that time?
J. Based on the copy of the club's constitution made available to me, the trustees were Datuk Harris and Wong Chik Lim.

S. ABD48, para. 5, "registered owner above is presently holding this property on trust in favour of LGC." The "registered owner" refers to Datuk Harris?
J. Yes, it does.

S. ABD48 was copied to Datuk Harris?
J. Yes, it was.

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The application for exemption failed.

S. Do you have the Kementerian's letter dated 12 February 1985 refusing exemption?
J. Yes, I have.

S. Upon receipt of this letter refusing exemption you then wrote to defendant of the failure of the application for exemption?
J. That is correct, on 19 February 1985 (ABD117).

S. You also enclosed copy of Kementerian's letter refusing exemption?
J. That is correct.

S. Why you wrote to defendant informing him of this development enclosing a copy of P18, not to the Club on whose behalf you purported to act?
J. A copy was extended to the president of the Labuan Golf Club.

S. Why not the other way round?
J. To answer your question I have briefly to let you know what transpired

at my meeting with Datuk Harris on 29 August 1984 at his office. Briefly, I explained to Datuk Harris that it was not a straightforward matter to comply with his instructions to transfer the land in the name of the golf club. I explained that the transfer could only be registered if the club could pay stamp duty when assessed. I informed him that Mr. Perry who was then the president of LGC had informed me that the club would not have sufficient funds to pay for the stamp duty. I also briefed Datuk Harris that the transfer was required in support of an application for exemption of stamp duty which I had made earlier. Datuk Harris among other things then told me to proceed with the stamp duty exemption application and that I was to inform him through Datuk Nicholas Fung of all developments and that he specifically mentioned that should the application fail he would tender a personal appeal to the Ministry.

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S. Do you know whether Datuk Harris made a personal appeal to Kementerian Kewangan for exemption as per the discussion with you?

J. I recall vaguely seeing such a letter but I cannot find one in my file.

S. Are you referring to letter from the club to Deputy Prime Minister (ABD55)?

J. It may have been this letter.

S. In 1986 two letters were written by defendant to LGC and copied to you where defendant put LGC on notice that he wanted to treat the transfer as cancelled (ABD53 and 54). You remember these letters?

J. I only have a copy of the letter dated 2 August 1986 (ABD53) on my file.

S. On this stamp duty exemption you were acting for the LGC, why ABD 53, 54 written by defendant to LGC copied to you? Were you required to do anything?

J. I don't think I was required to do anything by this time.

S. The transfer referred to in ABD53 referred to the transfer you had prepared?

J. I assume so.

S. On receipt of ABD53 did you find out from defendant whether he had made the personal appeal he had promised he would make?

J. No.

S. Did you on receiving ABD53 advise defendant that he cannot cancel the transfer?

J. No.

S. Did you advise LGC on their legal rights on the notice given by defendant (ABD53)?

J. No.

S. ABD52, your letter to defendant returning title deed and two copies memorandum of transfer, sent a few months after Kementerian had rejected stamp duty exemption?

J. That is correct.

S. At that time you wrote ABD52 returning the title deed were you aware whether there was any appeal from defendant to Kementerian or from LGC to Kementerian?

J. I cannot be certain. As I said earlier I recollect vaguely an appeal being made but I cannot recollect whether such was before or after my letter ABD52.

S. ABD52, what did you mean "pending further instructions from your goodself and from the Labuan Golf Club"?

J. As far as I was concerned I received two sets of instructions. First set indirectly from Datuk Harris to proceed with the transfer, the second from the LGC in respect of the application for exemption of Stamp Duty. Because the exemption was not granted I could not proceed with the transfer unless I received fresh instructions from the registered owner, Datuk Harris, and from the LGC.

S. In so far as the transfers were concerned you did not treat the matter as closed, you were awaiting for further instructions?

J. That is correct because I had done what I could and could proceed no further and at that time I did not receive any instruction or notice that the proposed transfer was to be called off entirely.

S. ABD 52, was the title hand delivered?

J. The title deed together with this letter I recollect very clearly was collected by one, Mr. Arif Koh, who I mentioned earlier was collecting the title on behalf of Datuk Harris.

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S. ABD48, "trustees", ABD50 "Labuan Golf Club" and ABD51 "Labuan Golf Club". Although you were on record as acting for "trustees" or "LGC" itself you were also receiving instructions on the matter from Datuk Harris as the transferor?

J. That is correct.

S. On 29 August 1984 you received instructions on the Stamp Duty exemption directly from Datuk Harris, defendant, in your face to face meeting with him?

J. He did not put it in that manner when I entered.

Mr. Sri Ram:

I did not ask the 29 August 1984 meeting.

Mr. C. Das:

It does touch on the exemption stamp duty matter.

S. Tell us in what way defendant put it to you?

J. When in Datuk's office, Datuk Harris was actually asking Datuk Nicholas Fung if it was all right for him to sign the transfer and he used, he said another sentence, "shall we give the land to them?" At that point I interrupted and explained the problem about stamp duty. Datuk then said words to the effect "O.K you try to get that exemption for them, then they can have the land", but if the application fails he would make personal appeal. If I remember correctly, he referred to the Deputy Prime Minister. This is the reason why I wrote the letter dated 19 February 1985.

From the above events it can be seen that the transfer would have gone ahead as schedule if not for the non-payment of stamp duty. The defendant was ready and willing to transfer the land to the LGC and it can be inferred that he did so knowing that he is only a bare trustee of the land.

Fraud

I agree with the submission by the plaintiffs' Counsel that the LGC's case on fraud is an extension of the bare trustee principle. The plaintiffs' case on fraud against the defendant is based on the fact that the defendant deliberately withheld the fact that he had sold the land to Berdikari for valuable consideration and thereafter exploited the ignorance of the new management committee of the LGC by actively showing his interest of the attempt to retake the land from the LGC with a view of selling the said property for RM23 million, see NABD12, as evidenced by his address to the management committee, see ABD59 and ABD95.

And with respect, I agree with the submission by the plaintiffs' Counsel:

4. The Fraud Point

1. This point is a consequence or extension of the bare trustee point. The club's case on fraud is based on the fact that the defendant had withheld the information that he had sold the said land to Syarikat Berdikari for valuable consideration, and dealt with the club from 1986 onwards with the view of taking back the land as if he was still the true registered proprietor and not a bare trustee. The defendant was exploiting the ignorance of the new management committee of the club of this fact.

2. The evidence shows that the defendant actively practised deception on the club. His scheme, which is clearly set out in the documents, show that he was intent on re-taking the land to resell it for a minimum of RM23,000,000 to take advantage of Labuan's new status as a financial centre: see his address to the management committee at ABD59.

3. Briefly, the actions he took in perpetuation of his fraud were:

i) proposal on 13 April 1989 to put the club on a 25-year lease or sale of land, whichever is earlier: see ABD57.

ii) proposal on 25 October 1990 to build an alternative golf course at Kiansam and transfer existing membership: ABD59.

iii) seeking to arrive at an understanding with the Club on the basis of him being the registered proprietor, and withholding information of the true position: see proposed draft agreements at ABD60.

iv) issuing ultimatum to the club on 21 January 1991 to put pressure on them accepting his draft agreement: see ABD65.

v) seeking to persuade the Berdikari directors in March 1991 to state that the company did not buy the said land from him: see affidavit of Berdikari (Exh. P13) and proposed affidavit from defendant **not** affirmed by Berdikari directors, see Exh. MD2 to Exh. P13.

4. The fraud and deception of the defendant is clearly brought out by his attempted dealings with the Berdikari directors from late 1990 onwards to disengage himself from the Berdikari sale in order that he could evict the club as the so-called registered proprietor of the land: see his letter dated 11 October 1990 (Exh. P14).

5. Thus, the club's case against the defendant is based on actual fraud. The plaintiff would, *inter alia*, rely on the proposition in *Bahr v. Nicolay (No. 2)* [1988] 62 ALJR 268, that fraud may be brought home against a registered proprietor on transactions after he became registered as proprietor.

See also *Loke Yew v. Port Swettenham Rubber Company* [1913] AC 491 where a trustee who is the registered proprietor converted property belonging to Loke Yew.

Whether or not the plaintiffs have an irrevocable licence to occupy the land promissory estoppel and/or estoppel by conduct.

Another head of claim by the plaintiffs is the promissory and proprietary estoppel/irrevocable licence in equity point.

The plaintiffs seem to say that since so much money was spent building the LGC and the golf course with the knowledge and acquiesence of the defendant, it gives rise to the estoppels mentioned above. The plaintiffs relied on

Exh. P65, ABD33 and P39 to show the Government contribution to the golf course and P43 for the record of donations and grant to the LGC from 1975. In the first draft agreement ABD60 the defendant agreed that the LGC had expended money.

With respect, I agree with the submission by the plaintiffs' Counsel that just because the financing of the LGC did not come from the LGC it did not follow that the concept of estoppel be it proprietary or promissory did not apply, see *Cheng Hang Guan & 2 Ors. v. Perumahan Farlim (Penang) Sdn. Bhd. & 3 Ors.* [1994] 1 CLJ 19; [1994] 1 AMR (5) 201.

The defendant contended that the money to build LGC did not come from LGC itself. Therefore the concept of estoppel did not apply. It is contended by the defendant that the LGC must prove that it expended money for the construction of the clubhouse, the golf course and that the LGC is the owner of the said clubhouse and golf course. Further, it is the submission by the defendant's Counsel that under s. 34 of the Evidence Act 1950 the production of the LGC accounts for the various years cannot be used to attack any liability on the part of the defendant. Therefore this head of claim must fail.

With respect, I agree with the submission by defendant's Counsel that the plaintiffs did not seem to pursue this head of claim seriously judging by the sketchy submission by the plaintiffs' Counsel on this point.

However, it is obvious that various parties have expended money to build the LGC to what it is today which the defendant stood by and let all the development go on unabated on the land. As mentioned before, the defendant even helped co-ordinate the building of LGC and was ready and willing to transfer the land to the plaintiffs.

It is hard to believe that a person would let various parties build on his land and not do anything to stop it, unless he, as the defendant in the present case, had led the plaintiffs to believe or made assurances that he, as the defendant in the present case, would transfer the land to the plaintiffs.

The plaintiffs had already led evidence to show that the land was sold by the defendant to Berdikari/Tambisan for the benefit of the plaintiffs.

With respect, I am unable to agree with the submission by the defendant's Counsel that for equity to be raised in favour of the plaintiffs the plaintiffs must own the club and golf course as well as having expended money on it.

Lord Denning in *Inwards v. Baker* [1965] 24B 29, [1965] 1 All ER 446 said that, "... If the owner of the land requests another, or indeed allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the

licence such as to entitle him to stay. He has a licence coupled with an equity ... eventhough there is no binding contract to grant any particular interest to the licensee nevertheless the Court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request of or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so the Court will not allow that expectation to be defeated where it would be inequitable to do so ... ."

I am of the view that it would be unconscionable for this Court to allow the defendant to insist on his strict legal rights considering what have been expended on the land by Berdikari/Tambisan and various Government organisations, see full discussion on the concept of equity by Edgar Joseph Jr. SCJ in *Cheng Hang Guan & 2 Ors. v. Perumahan Farlim (Penang) Sdn. Bhd. & 3 Ors.* [1994] 1 CLJ 19; [1994] 1 AMR (5) 201.

The defendant's denial in Parliament, Laporan Jawatankuasa Hak dan Kebebasan (Penggal Yang Kedua) Dewan Rakyat Yang Ke-enam DR. 2 Tahun 1984, on 28 May 1984.

The defendant even denied in Parliament on 28 May 1984 that he is the owner of the land. He told the Privileges Committee that the land belongs to the LGC, see P40, with the defendant saying that "... Itu rekod sahaja ..., kepunyaan Golf Club. Mereka beri nama saya menjaga kerana takut gaduh-gaduh." Thus a bare trustee:

> **Datuk Harris bin Mohd. Salleh:** Jadi saya ada satu title di sini untuk rekod. No. (1) tadi, saya mengaku nama saya, saya mahu rekodkan di sini Title 207521589 seluas 74.68 ekar ialah golf course yang mana saya mesti mempunyai nama di situ. Itu rekod sahaja – golf course sudah dipakai di situ lapan tahun, golf course sudah dibuat, kepunyaan golf club. Mereka beri nama saya menjaga kerana takut gaduh-gaduh. Now, summing up, boleh saya summing up?

With respect, perhaps needless to say the defendant's admission in Parliament lends more credence to the plaintiffs' case that the defendant knows that he is only a trustee of the land and that it is more likely than not that he has also been paid off for the land.

It was never actually brought up in evidence that the plaintiffs were unwilling to pay for the stamp duty. They were never really given a chance to raise the money after exhausting all means to get the exemption from paying. The defendant decided that he wants the land back hence the filing of this suit by the plaintiffs.

The defence disputes the admissibility of P44 by virtue of s. 23 House of Parliament (Privileges and Powers) Act 1952, which prohibits the giving of

evidence outside the House of any evidence before the House without the leave of the House. Abdullah Abdul Wahab (PW13), the Acting Principal Assistant Secretary of Parliament confirmed that he did not get special leave from the House before giving evidence.

With respect, I agree with the submission by the plaintiffs' Counsel on the above matter, in that, we are concerned only whether the record of the proceedings in Parliament is a true record of the statement made by the defendant in the proceedings.

The plaintiffs relied on Art. 63(1) of the Federal Constitution:

> 63(1) The validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any Court.

Therefore, it follows that it is not open to this Court to challenge the accuracy of anything said or done in Parliament or in its Committees. In *Prebble v. Teleminon NZ Ltd.* [1994] 3 All ER 407 as cited by the plaintiffs' Counsel, held *inter alia*:

> For these reasons (which are in substance those of the Courts below) their Lordships are of the view that parties to litigation, by whomsoever commenced, cannot bring into question anything said or done in the House by suggesting (whether by direct evidence, cross-examination, inference or submission) that the actions or words were inspired by improper motives or were untrue or misleading. Such matters lie entirely within the jurisdiction of the House, subject to any statutory exception such as exists in New Zealand in relation to perjury under s. 108 of the Crimes Act 1961.
>
> However, their Lordships wish to make it clear that this principle does not exclude all references in Court proceedings to what has taken place in the House. In the past, Parliament used to assert a right, separate from the privilege of freedom of speech enshrined in Art. 9, to restrain publication of its proceedings. Formerly the procedure was to petition the House for leave to produce *Hansard* in Court. Since 1980 this right has no longer been generally asserted by the United Kingdom Parliament and their Lordships understood from the Attorney-General that in practice the House of Representatives in New Zealand no longer asserts the right. A number of the authorities on the scope of Art. 9 betray some confusion between the right to prove the occurrence of parliamentary events and the embargo on questioning their propriety. In particular, it is questionable whether *Rost v. Edwards* [1990] All ER 641; [1990] 2 QB 460 was rightly decided.
>
> Since there can no longer be any objection to the production of *Hansard*, the Attorney-General accepted (in their Lordships' view rightly) that there could be no objection to the use of *Hansard* to prove what was done and said in Parliament as a matter of history. Similarly, he accepted that the fact that a statute had been passed is admissible in Court proceedings. Thus, in the present action, there cannot be any objection to it being proved what the plaintiff or the Prime

Minister said in the House (particulars 8.2.10 and 8.2.14) or that the State-Owned Enterprises Act 1986 was passed (particulars 8.4.1). It will be for the trial Judge to ensure that the proof of these historical facts is not used to suggest that the words were improperly spoken or the statute passed to achieve an improper purpose.

It is clear that, on the pleadings as they presently stand, the defendants intend to rely on these matters not purely as a matter of history but as part of the alleged conspiracy or its implementation. Therefore, in their Lordships' view, Smellie J was right to strike them out. But their Lordships wish to make it clear that if the defendants wish at the trial to allege the occurrence of events or the saying of certain words in Parliament without any accompanying allegation of impropriety or any other questioning there is no objection to that course.

The provisions of the New Zealand's Art. 9 of the Bill of Rights is similar to our Art. 63(1) of the Federal Constitution where anything done or said in Parliament cannot be questioned by any Court, therefore similarly as regards P44 it is not open for any party to question or challenge the accuracy of P44 and as "to prove what was done and said in Parliament."

Conclusion

The oral and documentary evidence led by the plaintiffs points on a preponderance of evidence and on a balance of probabilities irresistibly that the plaintiffs have made a case against the defendant for the defendant to answer and since the defendant has elected not to adduce any evidence the defendant fails, (see *International Times & Ors. v. Leong Ho Yuen* [1980] 2 MLJ 86 FC) and therefore I give judgment in favour of the plaintiffs against the defendant.

Declaration/Judgment

Declaration/judgment for the plaintiffs against the defendant as follows:

(1) the defendant holds the land as a bare trustee for and on behalf of the plaintiffs who are rightfully entitled to have its name registered on the land title held as Town Lease No. 207512589.

(2) the plaintiffs possess an irrevocable licence in equity to permanently occupy and remain on the land and enjoy all the benefits thereof.

(3) the defendant is bound by proprietary or promissory estoppel and/or estoppel by conduct not to resile from his obligation to convey and transfer the land into the name of the plaintiffs, forthwith.

(4) the defendant is not entitled to remain as the registered proprietor of the land, the name of the defendant be expunged from the land title of the land and the same be rectified by the name of the plaintiffs substituted in place thereof, forthwith.

(5) the defendant do transfer the land into the name of the plaintiffs and/or plaintiffs' trustee, forthwith.

(6) the defendant is to pay costs to the plaintiffs.

I do grant stay of execution pending appeal.

Reported by Tey Tsun Hang &
Gan Peng Chiang